



"I will stand for my client's rights.
I am a trial lawyer."
-Ron Motley (1944-2013)

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May 3, 2022

VIA ECF

Hon. Richard Mark Gergel
U.S. District Court for the District of South Carolina
J. Waites Waring Judicial Center
83 Meeting Street
Charleston, South Carolina 29401

Re: *In re AFFF Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG

Dear Judge Gergel:

The Plaintiffs Executive Committee ("PEC") writes to provide an update to its April 29, 2022, submission to the Court regarding proposed amendments to CMO 19 in light of the April 29, 2022 Designation and Disclosure of Expert Witnesses ["DCC Expert Witness Disclosure"] of the Defense Coordinating Committee ("DCC").

On Friday, the DCC identified 51 experts, in contrast to only 14 experts identified by the PEC, whose depositions (if they were all taken) could never be shoe-horned into the limited timeframe currently available under CMO-19B. The DCC, surely knowing it intended to identify 51 proposed expert witnesses, still engaged in negotiations of proposed amendments to CMO 19-B whereby expert discovery would be extended only 28 days until July 28, 2022. It is hard to imagine the DCC realistically believed expert discovery of all 51 experts could be completed by July 28, 2022, especially when: (1) there are not even 51 weekdays in all of June and July; and (2) certain of the DCC's experts produced more than one expert report providing separate case-specific expert reports in each of the three bellwether cases.¹

This calls into question the sincerity of the DCC's negotiations regarding amendments to CMO 19-B, and whether the DCC sandbagged the PEC in their negotiations over these deadline extensions to try to obtain concessions to extend the trial date. The disclosure of these 51 experts came only hours after the parties agreed to the 28-day extension. While we can say that the PEC negotiated that extension in good faith, we are not certain that the DCC can say the same given that they must have realized while they were negotiating that it would not be possible to depose all 51 experts within the negotiated extension period.

¹ Under CMO 22, which governs the expert deposition protocols, an expert may well be deposed for more than one day where multiple reports are issued. As such, given that certain experts produced more than one expert report, significantly more than 51 days would likely be needed to depose each of the DCC's experts.



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Nonetheless, because keeping the trial schedule intact is of paramount importance to the PEC, we wish to inform the Court that notwithstanding this development, the PEC will work with the DCC to conduct as many expert depositions as possible. Of course, we will confer with defense counsel to discuss other alternatives in the event there are any expert depositions that cannot be scheduled and/or completed within the deadline.

However, the PEC implores the Court not to extend the January, 2023 trial readiness date as requested by the DCC. That date is all that remains in dispute regarding proposed CMO 19-C, and, instead, leave the trial readiness date as is since it is clear the DCC remains intent on setting up whatever obstacles it can to continuously push the trial back.

We thank the Court for its continued time and courtesies.

Respectfully submitted,

s/ Fred Thompson
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cc: All Counsel of Record (by ECF)
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